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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

ANTHONY JOSEPH PETRILLI,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

No. 277

PETITION FOR WRIT OF CERTIORARI
and
BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX.

Page

PETITION FOR WRIT OF CERTIORARI..... 1–8

Summary 1
Statute involved 2
Statement 3
Petitioner not shown in automobile..... 3–4
Petitioner not identified as being one of robbers.. 4
Jurisdiction 4
The questions presented 5
Reasons for granting writ 6

BRIEF IN SUPPORT OF PETITION.....9–27

Opinion below 9
Jurisdiction 9
Statement of case 9
Specifications of error 10
Argument 12
I. The petitioner did not receive a fair trial.... 12
(a) Unfair to read aliases to jury and not prove them 12
(b) Unfair to call petitioner gangster..... 14
II. Evidence is insufficient 15
(a) The Circuit Court misstated the evidence 15
(b) The Circuit Court considered matters outside the record 15
(c) The Circuit Court decision misconstrued corpus delicti 16
(d) Corpus delicti properly defined..... 16
(e) Circumstantial evidence in case did not exclude every reasonable hypothesis of innocence 17
III. There is a variance 19
(a) No proof in particularity of that which was alleged with particularity..... 20

IV. Proof failed to show possession in petitioner.. 24

V. No proper proof of market value of jewelry in Texas 23

VI. Court erroneously charged jury that evidence showed petitioner in possession of stolen jewelry 23

VII. The Court's sentence is void 25

(a) When Court charges jury as if defendant were accessory after the fact, sentence may be only half of maximum..... 26

VIII. Circuit Court of Appeals' decision failed to consider all assignments of error..... 26

(a) It is the duty of the Supreme Court to correct the errors of the Circuit Court of Appeals and give full review to entire case 27

Conclusion 27

Table of Cases Cited.

Brady v. U. S., 24 F. (2nd) 399.....10, 18
D'Allessandro v. U. S., 90 F. (2nd) 640.....6, 10, 13
Forte v. U. S., 94 F. (2nd) 236.....10, 16
Husten v. U. S., 95 Fed. (2nd) 440..... 23
Isbell v. U. S., 227 F. 788.....10, 19
Kutler v. U. S., 79 F. (2nd) 440.....7, 21
Pearlman v. U. S., 10 F. (2nd) 460.....10, 16
U. S. v. Howard, 3 Summ. 12, 14, 15.....7, 10, 20
U. S. v. Salowitz, 99 F. (2nd) 714.....6, 10, 12
Van Gorder v. U. S., 21 F. (2nd) 939.....10, 18
Willsman v. U. S., 286 F. 582.....10, 11, 22, 24

Statutes Cited.

Judicial Code, Sec. 240 (a), as amended by Act of Feb. 13, 1925 (U. S. C. A., Title 28, Sec. 347)..... 4, 9
18 U. S. C. A., Section 415.....2, 26
18 U. S. C. A., Section 551.....11, 26

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No. .....,

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals of the Eighth Circuit, entered in the above cause on July 8, 1942, affirming the judgment and conviction of the United States District Court for the Eastern Division of the Eastern Judicial District in the City of St. Louis, State of Missouri, convicting petitioner of violation of 18 U. S. C. A., Section 415, 53 Stat. 1178.

SUMMARY.

This is a criminal case commenced in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri by a one-count indictment (R. 5-9) returned by grand jury and filed in court on the 23rd day of June, 1941.

Your petitioner was tried on November 12, 1941, and verdict of the jury was guilty. The Court on the 13th day of November, 1941, sentenced petitioner to ten years im-

prisonment. Petitioner appealed to the United States Circuit Court of Appeals for the Eighth Circuit, which Court, on July 8, 1942, affirmed the decision of the lower court (which opinion is not yet reported, but printed at R. 103-110).

STATUTE INVOLVED.

18 U. S. C. A., Section 415:

> "Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, feloniously converted, or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, feloniously converted, or taken, or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: Provided, That the provisions of this section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of (1) an 'obligation or other security of the United States,' as defined in section 261 of this title or (2) an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note, issued by any 'foreign government' as defined in section 288 of this title, or by a bank or corporation of any foreign country. May 22, 1934, c. 333, Section 3, 48 Stat. 794, as amended Aug. 3, 1939, c. 413, § 1, 53 Stat. 1178."

STATEMENT OF THE CASE.

At 8:30 o'clock a. m. on February 7, 1940, Thomas Slifkin, a jewelry salesman, left the Adolphus Hotel at Dallas, in the State of Texas, and drove in his automobile past the Town of Garland, Texas, when a car (not the one described in the evidence) approached and pushed him off the road. One man was waving a gun at him. Slifkin testified (R. 19) he did not have the least idea who the men in the car were. Slifkin saw two men. They commanded him to turn his head and get in the back of his own car where he was caused to lie on the floor covered up under some coats. The two men talked to him about the jewelry, code mark, price, etc., and drove with him in his car for several hours, releasing him at 2:15 o'clock p. m. thirty-five miles west of Texarkana, Arkansas, in the State of Texas (R. 21).

At 5:30 o'clock a. m. on February 8, 1940, two Missouri State Highway Patrolmen were sitting in an automobile near the intersection of Lindbergh road and Highway No. 66 (which is just outside and west of the city limits of the City of St. Louis, Missouri) when a Ford car bearing Minnesota state licenses passed, eastbound toward St. Louis. It was misty and freezing (R. 44). The patrolmen testified that the Ford was traveling between 60 and 65 miles per hour; that they gave chase; that the Ford increased its speed to about 85 miles per hour; that there were two men in the front seat of the car and one in the rear seat; that the Ford hit a concrete abutment which held up an intersection sign at U. S. Highway No. 66 and Laclede Station road and turned over on its left side; that they were more than fifty yards from the Ford when it turned over; that they found two men in the overturned car; that they found petitioner "in front of a filling station located on the north side of the highway about twenty-

five yards from the scene of the accident" (R. 35-6, 43-4-5). Neither patrolman knew who was in the Ford at the time they gave chase and before it turned over (R. 41-2). Neither patrolman would say that they ever saw petitioner in the Ford. The two occupants of the wrecked Ford and petitioner were placed in an ambulance and the driver thereof was directed to take them to a hospital. The wrecked Ford car was towed a block away to Horst Auto Station, where the patrolmen found a large leather satchel in the rear seat containing jewelry. There was no definite or particular description of the jewelry given by the witness. At record page 37 one patrolman said: "It had several rings in it. There were several individual ring boxes containing rings." At record page 45 the other patrolman described the jewelry as "rings and settings for ladies' and men's rings. There were brooches in there and pins." Neither patrolman produced any of the jewelry nor a list thereof.

The prosecution made no effort to show where the wrecked car came from or that it ever crossed any state line; that petitioner was ever in the State of Texas, or that the wrecked automobile was ever outside Missouri or beyond the limits of St. Louis County, Missouri.

Slifkin testified (R. 19) that he did not know who took the jewelry; that he had not seen the petitioner in the State of Texas.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C. A., Title 28, Section 347).

THE QUESTIONS PRESENTED.

1. Petitioner did not receive a fair and impartial trial because the indictment contained twenty-eight aliases which were read to the jury, Government counsel assuring the Court that he would prove the aliases. The Government closed without proving a single one of the aliases. Government counsel in his closing argument to the jury called the petitioner a "gangster."

2. The evidence is insufficient to sustain conviction.

3. There was a variance between the allegations and the proof. The indictment describes sixty-one items of jewelry in particularity, but the Government offered no proof in particularity.

4. The proof failed to show that petitioner possessed the alleged stolen property.

5. There was no proof that the jewelry found in St. Louis County had a fair market value of $5,000 in Texas.

6. The Court erroneously charged that the evidence showed that the defendant was in possession of the jewelry.

7. The sentence pronounced by the Court is void.

8. The decision of the Circuit Court of Appeals incorrectly states the evidence and contains statements not supported by the record.

9. The Circuit Court of Appeals refused to pass upon all the points raised in petitioner's appeal.

REASONS FOR GRANTING APPLICATION FOR WRIT.

1.

The decision of the Circuit Court of Appeals regarding the matter of aliases is in conflict with the decision of the Third Circuit Court of Appeals in the case of D'Allessandro v. United States, decided June 10, 1937, 90 F. (2nd) 640, wherein the Court said:

> "None the less, the string of aliases may be so arranged as to carry the implication that the defendant belongs to the so-called criminal class and thus half convict him as soon as the indictment is disclosed to the jury."

In the case at bar the Assistant United States Attorney opened the prosecution by reading the indictment and the aliases. Counsel for petitioner objected and warned the Court that, unless the aliases were proved, petitioner would move for a dismissal. The Assistant United States Attorney said, "We are going to prove these aliases" (R. 15). None of the aliases were proved.

In the Seventh Circuit, in the case of United States v. Salowitz, decided October 19, 1938, 99 F. (2nd) 714, the Court said:

> "Of course, if a person has used names other than his right name, as the record discloses was the case so far as appellant is concerned, and the government proved such aliases, there can be no legitimate complaint. Otherwise, it is not difficult to see how a defendant might be prejudiced before a jury."

In the case at bar it is seen that the Government deliberately set the trial in an atmosphere of prejudice with a backdrop of passion in order to sway the jury, then fanned the flames of passion and prejudice by shouting, in the closing argument, that the defendant was a gangster,

"the purpose of that statute, and you men know what the purpose was, is to stop gangsters, like these men here, who are robbing men on the highway and transporting the property taken * * *."

These tactics deprived the petitioner of a fair and impartial trial as guaranteed by the Constitution.

2.

The decision of the Circuit Court of Appeals in sanctioning such unfair trial tactics so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

3.

The decision of the Circuit Court of Appeals in refusing to pass upon all of the errors assigned and briefed by petitioner constitutes a violation of the Fifth Amendment in that it deprives petitioner of his liberty without due process of law.

4.

The Circuit Court of Appeals' decision as to the Government's failure to prove in particularity that which was alleged in particularity is contrary to the ruling of this Court in United States v. Howard, 3 Summ. 12, 14, 15, and in conflict with the case of Kutler v. United States, 79 F. (2nd) 440, 3rd Circuit. The indictment alleging sixty-one items in particularity, it was encumbent upon the Government to prove these item by item with particularity and not by generalizations, as it did (R. 24, 25).

5.

It is the duty of the Circuit Court of Appeals to state the facts accurately (see account of misstatement, page 15 of supporting brief). It also is the duty of the Circuit Court to pass on all assignments of error it refused (R. 107), pass on assignments 3 (R. 96), 4 (R. 97-98), 5 and 6 (R. 99), 6 and 7 (R. 106). The Circuit Court having so failed, it is the duty of this Court to review these assignments in order to determine if petitioner had a fair trial.

Wherefore, your petitioner respectfully prays that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals herein be granted.

BRYAN PURTEET,
Attorney for Petitioner.

Dated St. Louis, Mo., July 31, 1942.